

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ROBERT L. THOMPSON, JR.,)
)
)
Plaintiff,)
)
) **No. 3:13-cv-0526**
v.)
)
ROBERT SPURGEON, et al.,)
)
Defendants.)

ORDER

Pending before the Court is a Report and Recommendation (“R & R”) of the Magistrate Judge, recommending that *Defendants’ Robert Spurgeon and Gayla Gibbs Motion for Summary Judgment* (Docket Entry No. 24) be granted and the case be dismissed with prejudice. The R & R provides, in part,

Although the plaintiff’s allegations were sufficient to state a claim for relief permitting the case to survive frivolity review under 28 U.S.C. § 1915(d), at this stage of the proceedings and when challenged upon a motion for summary judgment, there is insufficient evidence before the Court upon which a reasonable jury could find in favor of the plaintiff on this claim. Summary judgment should be granted to the Defendants.

What happened to the plaintiff was unfortunate and regrettable and may not have occurred had the actors involved, including both the plaintiff and the Defendants, taken different actions, but there is simply no evidence before the Court supporting a claim that the Plaintiff’s constitutional rights were violated. *See Hartsfield v. Vidor*, 199 F.3d 305, 309 (6th Cir. 1999). Given the undisputed evidence that is before the Court, no reasonable jury could find in favor of the plaintiff.

Because the Court finds insufficient evidence to support a constitutional claim, it is unnecessary to address the Defendants’ alternative arguments for summary judgment.

(Docket Entry No. 39). No objections were made to the R & R.

Where no objections are made to the R & R, “[t]he district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b). Having thoroughly reviewed the record in this case and the applicable law in accordance with Rule 72(b), the Court will accept the R & R.

Accordingly, the Court hereby rules as follows:

- (1) The Report and Recommendation (Docket Entry No. 39) is hereby ACCEPTED and APPROVED;
- (2) *Defendants' Robert Spurgeon and Gayla Gibbs Motion for Summary Judgment* (Docket Entry No. 24) is hereby GRANTED;
- (3) This case is hereby DISMISSED WITH PREJUDICE; and
- (4) Any appeal shall NOT be certified under 28 U.S.C. § 1915(a)(3) as taken in good faith.

The Clerk is directed to enter Judgment in a separate document in accordance with Federal Rule of Civil Procedure 58.

It is SO ORDERED.



KEVIN H. SHARP
UNITED STATES DISTRICT JUDGE